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Mayor

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90-Day Expiration Date:	September 26, 2004

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: Petition # 242-04 of ALD. YATES proposing that **Sec. 30-15** be amended by reducing to .35 the FAR for lots containing 10,000 sq. ft. or less located in Multi-Residence districts.

CC: Mayor David B. Cohen
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: *Hold, pending further study of FAR in Multi-Residence zones leading to adoption of reduced FAR overall.*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

I. BACKGROUND

Floor area ratio (FAR) regulations were first incorporated into the Zoning Ordinance in 1997 with the adoption of Ordinance V-112, April 23, 1997 (Board Order 457-96(2)). A key purpose of FAR is to help regulate the density of development and building mass (bulk) on a lot by setting limits on gross floor area, which may be built.

Section 30-15, Table 1- Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1) establishes the respective FAR requirements by zone. These are further detailed and amplified in footnotes 5, 6, and 7. In turn, Footnote 7 has four parts, including part 4, which was recently amended per Ordinance X-75. Alderman Yates proposes to amend the Floor Area Ratio (FAR) found in Section 30-15, Table 1 for Multi-Residence districts by inserting an FAR of .35 for lots having 10,000 sq. ft. or less. For residential

buildings FAR is expressed as a ratio of gross floor area of a building divided by total lot area. Section 30-1 sets out detailed definitions of FAR and gross floor area, and is also provided in Attachment A.

II. EXISTING ORDINANCE AND PROPOSED AMENDMENT

The proposed change under this petition affects the FAR column in Section 30-15, Table 1, for all four Multi-Residence Zoning Districts. Currently an FAR of 0.4 is established for single- and two-family dwellings, regardless of lot size. The petitioner proposes to insert the FAR of 0.35 for lots having a lot area of 10,000 sq. ft. or less, establishing a two-tier FAR system based on lot size.

III. ANALYSIS

Committee reports of Board of Aldermen deliberations leading up to the adoption of the FAR regulations in 1997 as a mechanism to regulate “as of right” development indicate concern regarding construction of very large homes (“monster homes”) and regarding conversion of a single family dwelling to a two-family dwelling with a large addition outside the footprint of the original dwelling. However, the Board also sought to avoid impacting existing structures, and in general applied FAR primarily to new construction or where an existing structure was demolished 50% or more as part of a reconstruction project. The following table summarizes the application of FAR to residential structures.

Zone	FAR* O/L & N/L	Footn. 7(1) FAR applies <u>only to</u> : All above grade new construction	Footn. 7(2) FAR applies <u>only to</u> : Total demo of SF home & repl. by 2F	Footn. 7(3) FAR applies <u>only if</u> : more than 50% of exist. structure is demolished	Footn. 7(4) FAR applies <u>only if</u> : 2 nd unit is built outside existing footprint.
SR1(N/L)	.2	Yes	No	Yes	No
SR1(O/L)	.25	Yes	No	Yes	No
SR2	.3	Yes	No	Yes	No
SR3	.35	Yes	No	Yes	No
MR1-4	.4	Yes	Yes	Yes	Yes

*FAR applicable to “Old lots”(O/L) -- pre-1953 lots; “New lots” (N/L)-- post-1953 lots.

In addition, the following apply in all residential zones:

Footnote 5 – Allows an increased FAR by special permit if the proposed structure is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood.

Footnote 6 – Provides a FAR bonus of 0.05 for construction on pre-1953 lots when post-1953 lot setback and coverage requirements are met.

The above table indicates that the Zoning Ordinance makes available various FAR exclusions for existing structures. In effect, one can significantly alter an existing structure (1F or 2F) and increase its FAR - without any limit - so long as less than 50% of the structure is demolished. As a result, in a situation where a structure contains two units, each of the units can be expanded without FAR limits so long as less than 50% of the structure is demolished, and so long as all other applicable dimensional controls including lot coverage and minimum open

space are observed. However, when FAR is triggered, the calculation applies to the total building – i.e. existing old portions and new construction. It is also noted that while the 30-15 Task Force established by the Zoning and Planning Committee (ZAP) of the Board of Aldermen to evaluate and recommend improvements to Section 30-15 has from time to time discussed whether to consider elimination of the 50% exclusion and to apply FAR across the board to all situations has not yet developed a recommendation on this matter. *The Zoning and Planning Committee should discuss this subject further and consider docketing an item to eliminate this exclusion.*

Following the adoption of FAR requirements in 1997, FAR applies fully to all new construction, which has occurred since that time. For example, if built after 1997, a structure is deemed “new construction” subject to Footnote 7(1), including subsequent additions. More recently Ordinance X-75 was adopted March 1, 2004, clarifying and tightening the language in Footnote 7(4) pertaining to construction of a second dwelling unit beyond the existing building footprint. FAR now applies to the entire building regardless of whether the number of units increased or not.

Also, as indicated in the above table, the construction of a second unit is possible only in Multi Residence zones. While more than two units (attached dwelling units, multi-family dwellings, garden apartments) are also allowed in MR2-MR4 zones, these are allowed only subject to special permit and in such case FAR is not specified in Table 1. Accessory apartments (third dwelling unit) are allowed in MR1 and MR2 zones upon grant of a special permit. As a result, development involving more than two units in MR zones is largely controlled through the special permit process

Review of the zoning ordinances and by-laws of other Massachusetts municipalities including: Acton, Amherst, Brookline, Cambridge, Norwood, Quincy, Scituate, Watertown, and Wellesley found that none of these communities have a two-tiered FAR as proposed in the subject petition. That is, none have two FAR’s within the same zone *based on lot size*. Certain communities such as Acton, Amherst, and Scituate appear to have no FAR at all. Other communities including Norwood and Wellesley establish no FAR limits for residential development, while Quincy and Watertown generally set no FAR for single residence development, but regulate multi-family development. The following table summarizes selected FAR provisions and lot sizes in communities, which establish both for two-family dwelling type zones, compared with Newton:

Municipality	FAR	Lot Area	Zone(s)	Notes
Brookline	1.0; 0.75	5,000; 6,000	T-5; T-6	
Cambridge	0.5	5,000	Res. B	
Quincy	0.5	6,750	Res. B 1-3 units	
Newton (exist.)	0.4	7,000*;10,000**	MR 1-4	*Old;**new lot
Newton (prop)	0.35	10,000 & under	MR 1-4	
Newton (prop)	0.4	Over 10,000	MR 1-4	

When the proposed FAR scheme is applied to Ohio Avenue, it is noted that five of the nine properties are 10,000 sq. ft. or less and would be subject to the proposed new 0.35 FAR. In these five cases, the overall potential building size would be reduced by approximately 13% from that currently allowed under the 0.4 FAR. For details, see *Attachment B: Ohio Ave. FAR*

Summary. These data rely on house size information provided in the Assessors Property Summary as an approximation of gross floor area. However, it is noted that this is an estimate only, as the technical calculation of gross floor area per the Zoning Ordinance involves various excluding and including factors not typically utilized by the assessors. Determination of actual FAR at a particular location requires review of individual house building plans and specific FAR calculations. In this regard it is noted that the current Section 30-1 definition of gross floor area used in calculating FAR, excludes ½ stories (see Attachment A). A number of concerns have been raised by residents regarding new large building envelope dwellings under construction, most recently on Bourne St., Auburndale, where the technical definition of ½ story has been utilized to exclude significant finished floor area from the FAR calculation. The combination exclusion and ½ story definition enables developers to take advantage of these provisions and put up oversize buildings out of scale with neighborhood character. It is suggested that the Zoning and Planning Committee discuss this further and consider appropriate modifications to close this inadvertent loophole.

In the case of the Rochester Rd. area currently zoned MR-1 and proposed for rezoning to SR-2, (Pet #490-04), seventeen of the twenty-six properties in this group would be affected by the reduced 0.35 FAR, with a corresponding reduction of 13% in building size compared to the current 0.4 FAR. Newton GIS data indicates 4,167 (out of an estimated 5,500 properties) in Multi-Residence zones within the City have lot areas 10,000 sq. ft or less which would be affected by this proposal. To the extent that buildings have already been constructed to the current 0.4 FAR limit on such lots, these buildings would be made non-conforming.

It should also be noted that for the Single Residence 1 zone, Table 1 currently distinguishes between pre-1953 lots which are smaller, yet have a higher FAR (0.25) and post-1953 lots which are larger yet have a lower FAR (0.2). This pattern accommodates the higher density associated with older lots, while also mitigating oversize buildings as lots increase in size based on “new lot” requirements. This approach is also reflected in the zoning codes of other municipalities. However, the approach proposed for Newton’s MR zones suggests a reverse calculus. The smaller the lot, the less liberal the FAR, while the larger lots benefit from a more generous FAR. In addition, the proposal does not acknowledge any distinction in FAR between “old” and “new” lots as already implemented for the SR-1 zone. Introducing a different distinction based solely on lot area only for MR zones may cause a measure of confusion for the public in understanding Table 1 requirements. Moreover, the more restrictive FAR imposed on smaller lots counters the intent of the pre-1953 dimensional controls, which provide less restrictive parameters for development of older and smaller lots.

In addition, Table 1, Footnote 6 provides a bonus of 0.05 for pre-1953 lots where development meets the setback and lot coverage standards of post-1953 lots. As the current petition is silent on this aspect, it is possible to apply the bonus to the proposed reduced FAR for the smaller lot category, thereby increasing the FAR back to 0.4.

Finally, it is suggested this two-tier FAR proposal be reviewed by the Law Department for consistency with the provisions of the zoning enabling statute and for determination whether it meets the uniform treatment standard as currently proposed.

IV. CONCLUSION AND RECOMMENDATION

The Planning Department believes that it makes sense to continue to refine Newton’s FAR requirements to develop a more precise mechanism for modulating building size and avoiding

oversize dwellings inconsistent with neighborhood character. However, the proposed two-tier approach is not seen in other municipalities, and may possibly raise questions as to consistency with the uniform treatment standard of the zoning enabling statute. Moreover, the proposed descending FAR with respect to MR zones would reward the larger lots, while penalizing the smaller lots. In addition, the proposed more restrictive FAR for smaller lots counteracts the dimensional controls applicable to pre-1953 lots which are less restrictive by design. Finally, this approach would be inconsistent with the opposite FAR pattern already established in Table 1 for SR-1 zones with respect to “old” and “new” lots.

Records indicate that when the Board of Aldermen adopted the FAR requirements in 1997, the original limits were initially higher, then subsequently adjusted downward to the FAR currently reflected in Table 1. When concerns are raised about oversize buildings, many of these concerns originate within Single Residence districts as well as within Multi Residence districts, and involve a range of lot sizes across the board. The Planning Department believes it makes sense to revisit FAR overall and consider appropriate reductions Citywide as well as review and modify provisions which directly or indirectly have the effect of loopholes facilitating oversize dwelling development out of scale with neighborhood character.

The Planning Department recommends this petition be held pending further study leading to appropriate reduction of FAR in all Multi-Residence zones. In addition, we recommend that the Zoning and Planning Committee consider docketing an item to review and reduce FAR in all Single Residence zones. Finally, we suggest eliminating the 50% exclusion and reviewing and modifying the ½ story exclusion and definition.

Attachments

Attachment A: *Selected Definitions per Section 30-1*

Attachment B: *Ohio Ave. FAR Summary*

Attachment A – Selected Definitions per Section 30-1

Attic: The space between the ceiling joists of the top full story and the roof rafters.

Basement: Any story in a building in which two-thirds (2/3rds) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building. However, in the case of one- and two-family residential uses, any story in a building in which one half (1/2) or more of the distance between the floor and the ceiling next above it is below the average grade plane adjacent to the building.

Building: A structure, including alterations, enlargements, and extensions thereto, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property.

Floor area ratio (residential): (a) For residential structures in residential districts, gross floor area of a building on the lot divided by total lot area.

Floor area, gross (residential): (a) For residential structures in residential districts, the sum of the floor area within the perimeter of the outside walls of the building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical opens spaces, or other features exclusive of any portion of a basement as defined in this section. For atria, open wells and other vertical open spaces, floor area shall be calculated by multiplying the floor level area of such space by a factor equal to the average height in feet divided by ten (10). Excluded from the calculation are bays or bay windows which are cantilevered and do not have foundations and which occupy no more than ten (10) per cent of the wall area on which they are mounted and any space in an attic or half story as defined in this ordinance.